Skaiakos Point
Road construction and logging of old-growth trees near a proposed hiking trail by Sechelt Inlet

Complaint Investigation 990205

FPB/IRC/37

January 2001

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The Investigation

On June 22, 1999, the Board received a complaint about the construction of a logging road and cutblock on the northeast side of the Sechelt Peninsula near Oyster Bay. The road accesses a cutblock beside Halfway Beach Provincial Park. The road location was originally approved under Terminal Forest Products Ltd.'s 1998-2002 Forest Development Plan. The road location and cutblock were subsequently approved in the 1999-2003 Forest Development Plan. The complainant asserted that the road construction and cutblock would remove valuable old-growth stands and affect a proposed hiking trail.

The complainant raised several specific matters:

- road construction is proceeding before the approval of a silviculture prescription or a cutting permit for the cutblock
- the cutting will be contrary to old-growth retention and biodiversity targets in the draft Sechelt Peninsula landscape unit
- logging the cutblock will affect a recreational hiking trail
- there is no lease for a proposed log dump

The Board investigation focused on the following questions:

1. Were approvals of the forest development plan and silviculture prescription reasonable if harvesting the blocks would be contrary to old-growth retention and biodiversity targets in the draft Sechelt Peninsula landscape unit?

2. Was approval of the forest development plan reasonable if logging would affect a proposed recreational hiking trail?

3. Should road construction begin before the approval of a silviculture prescription or foreshore lease?

Although the complainant was concerned the road was being built before the log dump was approved, the Board did not investigate the approval of the log dump. The log dump, being on foreshore, is regulated under the *Land Act*, not the *Forest Practices Code of British Columbia Act* (the Act), and so the Board does not have the jurisdiction to investigate the approval of the foreshore lease.

Background

This complaint related to the need to maintain biological diversity and old-growth values, specifically in terms of old-growth retention and biodiversity targets in the draft Sechelt Peninsula landscape unit. Planning to maintain biodiversity should occur at both the landscape and stand levels. Maintaining a variety of habitats at the landscape scale and using management practices that provide important ecosystem attributes at the stand scale should

maintain biodiversity. The *Biodiversity Guidebook*[1] recommends practices to maintain biodiversity at both the landscape and stand level.

Investigation Findings

Old-growth trees and biodiversity

Were approvals of the forest development plan and silviculture prescription reasonable if harvesting the blocks would be contrary to old-growth retention and biodiversity targets in the draft Sechelt Peninsula landscape unit?

The 1999-2003 Forest Development Plan showed two blocks that are relevant to this complaint: cutting permit 95 in block #116-505 and block #116-504. The development plan proposed block #116-504 as a category "I" block. Category "I" blocks are not proposed for immediate development. They are depicted for information purposes only in order to solicit public and government agency comment and input.

Forest Development Plan

Section 10 of the Act states that the forest development plan must be consistent with any higher level plan, including landscape unit plans. In the Sunshine Coast Forest District, landscape unit plans (which are higher level plans) have not yet been established under the Code. The development plan may be consistent with a draft landscape unit plan, but until the landscape unit plan is declared to be a higher level plan, there is no legal requirement for the development plan to be consistent with it.

Finding #1

There was no legal requirement for the forest development plan to be consistent with the draft landscape unit plan. There was no higher level plan, as the Sechelt Peninsula landscape unit had not been established under the Act.

In approving a forest development plan, section 41(1)(b) of the Act states that the district manager must be satisfied that the plan adequately manages and conserves forest resources. Accordingly, in deciding whether to approve the plan, the district manager had to consider the measures proposed by the licensee to address old-growth and biodiversity.

On October 2, 1998, the district manager sent a letter to all licensees in the district providing information on old-growth forests. He provided the licensees with draft landscape units[2] and

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1 A guidebook that provides advice on implementing the Forest Practices Code.

2 Landscape unit plans contain objectives. A "landscape unit objective" is a statement of desirable future condition for a forest resource or forest resource use that is attainable through management action. Objectives may include biodiversity emphasis and seral stage distribution targets.

draft biodiversity emphasis options.[3] The district manager noted that consideration of the draft landscape units and objectives in development plans was voluntary because old-growth management areas (a component of a landscape unit) were not yet established or located.

In the absence of legally declared landscape units, sound forest practices would include consideration of the biodiversity advice in the *Biodiversity Guidebook*. The guidebook states that objectives for maintaining biodiversity within landscape units may include:[4]

- Seral stage distribution (the various development stages of plant communities as they occur across a landscape)
- Temporal and spatial distribution of cut and leave areas (where and when different ages and sizes of forests patches will occur across a landscape)
- Old seral retention and representativeness (how much and where older forests are retained)
- Landscape connectivity (generally contiguous forested areas that create habitat linkages within a landscape)
- stand structure (important structural attributes such as wildlife trees (including standing dead and dying trees, and coarse woody debris)
- species composition (what type(s) of trees will be grown or left, including the vegetation in the understory)

The district manager's draft landscape unit objectives were limited to biodiversity emphasis options and target percentages for seral stage distribution.

The district manager indicated that the draft Sechelt Peninsula landscape unit (in unit #222) was to have a low biodiversity emphasis rating. Also, the district manager noted that the coastal western hemlock (CWHdm) ecosystem subzone was under-represented in the landscape unit. The CWHdm ecotype was listed as having 2.7 percent (513 hectares) of existing old-growth. The draft target for the area was the minimum of nine per cent (1692 hectares) of old-growth.

Old-growth characteristics are typically associated with age class 9 (250+ years old) stands. Maintaining age class 9 stands and identifying recruitment areas (younger stands that will be managed to exhibit old-growth characteristics) is necessary to meet biodiversity emphasis options. In this case, the district manager noted that stands between 121 and 140 years old or 141 and 250 years old (age class 7 and 8) may contain old-growth characteristics similar to age class 9 stands. Therefore, it is possible that currently under-represented ecosystems are not as scarce as the forest inventory indicates. However, the best available information for the Sechelt Peninsula landscape unit is that old-growth is significantly under-represented.

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[3] *Biodiversity Guidebook* - September 1995, discusses biodiversity emphasis options as a range of three options for emphasizing biodiversity at the landscape level. Each option is designed to provide a different level of natural biodiversity and a different risk of losing elements of natural biodiversity.

[4] *Biodiversity Guidebook*, September 1995, page 11.

The *Biodiversity Guidebook* provides recommended targets for old seral stage retention for each natural disturbance type. The CWHdm ecosystem is a natural disturbance type 2 (NDT 2) area.[5] For NDT 2 areas, the guidebook states that old seral retention objectives may not be achievable in the short term, due to previous harvesting or natural disturbance history.

> Natural disturbance type is an ecological description used in the *Biodiversity Guidebook* to differentiate areas at the landscape level. The province is divided into different areas based on the type of natural disturbance that most influences the forest (e.g. fire, insects, wind or disease) and the frequency and extent of that disturbance.

The guidebook recommends that, for landscape units designated as high or intermediate biodiversity emphasis areas, all the existing old seral forest should be retained. Furthermore additional areas should be left to become old seral forest to make up the shortfall in the future. Alternatively, the guidebook recommends that the economic and social consequences of halting the timber harvest of old seral forest may be politically unacceptable for lower-biodiversity emphasis areas. If so, some additional harvesting of old seral stands may proceed, but the area equivalent to the shortfall in old seral area must be recruited over time under an approved long-term recruitment plan. In this case, the recommended emphasis was low. Consequently, even though old-growth in the coastal western hemlock ecosystem subzone was under-represented, existing stands could still be harvested. However, such harvesting would have to recognize the higher risk to biodiversity until the minimum nine percent old-growth target for the CWH is achieved.

The 1999-2003 Forest Development Plan was approved on May 13, 1999. The district manager stated that, according to the forest cover inventory, coastal western hemlock forest stands in this ecosystem subzone[6] estimated to be more than 250 years old (age class 9) are rare and under-represented in the landscape unit. The forest inventory indicated that cutting permit 95, block #116-505, contained some under-represented coastal western hemlock forest stands. However, a review by ministry staff pointed out that most of the area under block #116-505 had been logged at the turn of the century. Ministry of Forests staff confirmed that the forest stand was mislabelled as old-growth in the inventory. The proposed cutblock would not be affecting an old-growth stand, but rather a mixture of second-growth trees and scattered single older trees that were veterans left from the previous harvest.

The *Biodiversity Guidebook* provides guidance in terms of stand structure in NDT 2 areas. It recommends that "where possible, existing veteran trees should be maintained when second-growth stands are harvested."

Given that the block was a second-growth stand with some veteran trees remaining, the district manager's interest was in retaining those veterans. He considered the best place to do that was in the silviculture prescription. This is consistent with the recommendation in the *Biodiversity Guidebook* that, when second-growth stands with scattered veterans are encountered, the silviculture prescription—not the development plan—should outline the management strategies for veterans.

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[5] *Biodiversity Guidebook*, September 1995, pp 25-26.

Finding #2

In terms of cutting permit 95, block #116-505, the district manager's decision to approve the 1999-2003 Forest Development Plan was reasonable. The plan could adequately manage and conserve the old-growth forest resource by allowing measures to retain single older trees within a stand of second-growth trees in the silviculture prescription rather than the forest development plan.

"I" Block

A second block identified in the forest development plan was also in an area where old-growth values are under-represented. The identification of this block raised additional concerns about management of old-growth in the district.

This block was *not* subject to the district manager's approval of the forest development plan. Block #116-504 was a category "I" block. Category I blocks are not proposed for approval. Instead, they are shown for information purposes only to solicit public and government agency comment and input. The Ministry of Environment, Lands and Parks identified concerns with the proposed category I block in its response to the development plan. The ministry stated that the block has potential as an old-growth management area. The licensee responded that it recognized the significant old-growth in the area but, due to limited opportunities for operable timber, decided to suggest development. The licensee stated that it recognized the necessity of establishing old-growth management areas and of maintaining age class 9 to meet biodiversity emphasis options. However, until the landscape units are formally designated, the licensee plans to manage at the stand level only, managing biodiversity with wildlife tree patches.

Despite those earlier statements regarding biodiversity, the licensee has indicated that it is now beginning to address biodiversity across landscape units, not just at the stand level. In the fall of 1999, the licensee began working on a resource plan for its chart area. The plan is to address all resource values in the area, including the proposed Sechelt Inlet Heritage Trail and old-growth management areas. The licensee stated that it intends to amend the 1999-2003 Forest Development Plan to reflect this new approach.

In March 1999, the *Guide to Landscape Unit Planning* was published by the Ministry of Forests. It establishes implementation priorities for landscape unit planning provincially and assists with establishing old-growth management areas (at the landscape level) and wildlife tree patch retention rates.

The licensee's resource plan will provide the Ministry of Forests with information for a landscape unit plan. The district intends to have all landscape unit plans completed by July 2002, which will set objectives for wildlife tree patch retention rates and designation of old-growth management areas. The participation of the licensee on this unit should result in this landscape unit being declared earlier than 2002.

Finding #3

The licensee's 1999-2003 Forest Development Plan proposes block #116-504 in an area containing under-represented old-growth. However, the proposal is for information purposes only, and does not affect the district manager's approval of the development plan.

Silviculture Prescription

The complainant was concerned that the approval of the silviculture prescription for block #116-505 did not address old-growth retention according to the requirements in the draft Sechelt Peninsula landscape unit and advice in the *Biodiversity Guidebook*.

The *Biodiversity Guidebook* provides general guidance for maintaining biodiversity at the stand level. This advice applies to all disturbance types.[7] The guidebook also contains specific direction for stand structure considerations. In natural disturbance type 2, the guidebook advises maintaining snags, veteran trees, and coarse woody debris within predominantly even-aged stands for biodiversity. It also states that:

- Even-aged silvicultural systems with wildlife tree patches are appropriate to mimic natural stand-initiating events.
- Partial cutting, including commercial thinning, can be used to maintain a number of mature forest characteristics in some stands.
- Where possible, existing veteran trees should be maintained when second-growth stands are harvested.
- Practices for maintaining stand structure should be considered for all stands.

Consistent with the guidebook, the district manager directed all licensees to identify wildlife tree patches in their silviculture prescriptions. The district manager indicated that silviculture prescriptions would have to designate 14 percent of any blocks located in the CWHdm ecosystem subzone in the draft Sechelt Peninsula landscape unit as wildlife tree patches. Those wildlife tree patch retention rates were based on analyses of the draft landscape units.

The silviculture prescription for block #116-505 was approved on July 22, 1999. It describes wildlife tree patches both inside and outside of the block boundaries. Those wildlife tree patches constitute more than the 14 percent recommended for maintaining biodiversity.

Although wildlife tree patches are important for maintaining biodiversity, the most important consideration for the Board was the scattered veteran trees. The silviculture prescription for block #116-505 states that a scattering of large old-growth Douglas fir trees would be retained. The licensee explained that a "scattering" would be some 25 trees, although the logging contractor would be instructed to maintain as many of the veteran trees as possible. This follows the recommendations in the *Biodiversity Guidebook* to leave existing veteran trees in such

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[7] *Biodiversity Guidebook* - September 1995, pages 60 to 73.

areas. Block #116-505 was harvested during the winter of 2000 and six large veteran trees were removed. The licensee stated that approximately 125 trees (both veteran trees and second-growth trees) were retained on site. This would indicate that the licensee and the logging contractor did a first-class job of retaining the existing veteran trees.

The Board understands the licensee's reluctance to be more specific in the silviculture prescription. Specifying an exact number of veteran trees to be left uncut may be impractical because worker safety may restrict the options to leave trees. However, use of the ambiguous term "scattering" in a silviculture prescription should be discontinued. The silviculture prescription should include measurable objectives. The Board suggests that a safe, operationally-achievable range be specified in the prescription. In this case, the prescription could have specified that 75 to 150 trees would be retained.

Finding #4

The district manager's decision to approve the prescription was reasonable in the circumstances. The silviculture prescription contained a requirement to maintain veteran trees consistent with the *Biodiversity Guidebook* and also consistent with the wildlife tree retention rates provided by the district manager.

Recreational Hiking Trail

Was approval of the forest development plan reasonable if the logging would affect a proposed recreational hiking trail?

Recreational sites and recreational trails must be formally designated by the chief forester under section 6 of the Act before they are recognized by the Code. If designated, the district manager must establish objectives for such sites and trails. If recreation objectives have been established, the forest development plan must outline how the objectives will be met. The development plan must describe measures that will be taken to ensure that timber harvesting and road construction are consistent with the objectives for the trail.

The proposed Sechelt Inlet Heritage Trail is approximately 30 kilometres long, linking the communities of Sechelt and Egmont. The trail will join traditional trails and old logging roads. The trail is to provide access to salmon spawning creeks, marine habitat, old-growth forests, whale-rubbing rocks, marine seabirds, antique abandoned logging machinery, picturesque streams and diverse shore-to-summit ecosystems.

The 1999-2003 Forest Development Plan was approved on May 13, 1999. The proposed trail was not submitted to the district manager until June 15, 1999 for designation under the Code, and has not yet been designated. However, the complainant had mentioned the proposed hiking trail to the licensee before the development plan was approved. Since the location of the trail was approximate and not yet established or approved by the Ministry of Forests, the licensee did not make any changes to the development plan.

Finding #5

The proposed hiking trail has not been designated as a higher level plan. Consequently there is no Code requirement for the forest development plan to ensure that forest practices are consistent with the objectives for the trail. The district manager's approval of the plan was consistent with the Act.

Even though the trail was not designated under the Code, the district manager had to consider recreation resources in his approval. Under section 41(1)(b) of the Act, the district manager can only approve a plan if he or she believes that the plan adequately manages and conserves forest resources, including recreation. Was the decision consistent with sound forest practices; did it achieve the intent of the Code; and was it based on an adequate assessment of available information?

Recreation resources had to be considered when the district manager approved the development plan and the silviculture prescription. One of the features of the proposed trail was old-growth. As noted earlier, the district manager considered the inclusion of measures to protect old-growth in the silviculture prescription would be adequate. Without a formal trail proposal, the district manager had only tentative information to consider at the time of his approval of the forest development plan. The licensee did amend the silviculture prescription by making reference to the proposed hiking trail. The approval of the development plan and subsequent silviculture prescription did not preclude the creation of a hiking trail, so the approval was reasonable.

Finding #6

The district manager's approval of the forest development plan was reasonable. Without a formal trail proposal the district manager had only tentative information to consider at the time of his approval. His approval of the plan did not preclude the future creation of a hiking trail.

Since this investigation began, the licensee and the proponents of the Sechelt Inlet Heritage Trail have been discussing the trail and harvesting operations. The Board encourages the parties to continue working together during both development planning and landscape unit planning.

Timing of road construction

Should road construction begin before the approval of a silviculture prescription or foreshore lease? Did the decision to approve the road permit comply with the Code?

Section 58(2)(a) of the Act requires that, prior to road construction, a road must have been identified in an approved forest development plan and authorized by a road permit. The Act allows a person to build forest roads provided the roads have been approved in a forest development plan. Once the roads are approved, a person may apply for a road permit authorizing the construction of the road. Road construction can proceed independent of the approval of a silviculture prescription or a foreshore lease.

The Ministry of Forests approved a forest development plan on April 9, 1998, that included both the road and the block that it was accessing (cutting permit 95, block #116-505). On the same day, the district manager approved the road permit allowing construction of the road.

Finding #7

The Code does not prohibit the construction of a road to a cutblock before the silviculture prescription for that cutblock is approved. The road had been approved in the 1998 forest development plan, prior to road construction. The licensee complied with the Code.

Was the decision to approve the road permit reasonable?

The district manager had approved the forest development plan that allowed issuance of road permits and silviculture prescriptions. The district manager stated that, had there been outstanding issues identified in the forest development plan, he would not have approved the road permit. The 1998 approval of the forest development plan did not contain any conditions specific to either the road or foreshore lease. The silviculture prescription only contains information pertinent to the block, so any site-specific information contained in the silviculture prescription would not affect the road location.

On April 9, 1998 the district manager approved the road permit. However, that approval was conditional. The licensee could not begin construction of the road until the licensee had a foreshore lease for the log dump. Foreshore leases are issued by the BC Assets and Land Corporation[8] (BCALC).

A log dump is a handling structure and/or terrain, modified for the purposes of log handling. A log dump is often used to deposit logs into water.

However on April 28, 1998, the district manager issued an amended approval that allowed road construction without the foreshore lease. The district manager had reconsidered his decision because of lengthy delays with the issuance of foreshore leases. More importantly, he stated that the licensee would be solely responsible for any additional costs or restrictions imposed as a condition of the future

[8] Leases used to be issued by the Ministry of Environment, Lands and Parks.

foreshore lease. If the licensee did not obtain a foreshore lease, barging the wood could be a costly but possible alternative. Barging would require an industrial moorage tenure such as a lease, license of occupation or temporary permit. Obtaining tenure for an industrial moorage is less onerous than obtaining a foreshore lease. Barging the wood allows the logs to be handled without entering the water.

The district manager stated that there were no outstanding issues relevant to the construction of the road. Concerns with foreshore habitat would be addressed by BCAL in its foreshore lease approval. However, the Board is concerned that the approval of the road construction could influence the approval of the foreshore lease. BCAL staff considered the qualifying statement in the district manager's approval letter to be very important. Even though the road was built, it was not a deciding factor in BCAL's approval of the foreshore lease. Nevertheless, BCAL staff stated that approval of road permits before issuance of foreshore leases should be the exception, not the rule. BCAL confirmed that licensees must not try to use such a situation to their advantage.

Finding #8

The approval of the road permit before the granting of the silviculture prescription and foreshore lease was reasonable. Site-specific information contained in the silviculture prescription would not affect the road location. Concerns with foreshore habitat would be addressed by BCAL in its foreshore lease approval.

Commentary

During this investigation, the Board examined the silviculture prescription for block 505. Block 505 contained wildlife tree patches that were located outside the silviculture prescription boundaries. Code provisions do not protect wildlife tree patches located outside silviculture prescription block boundaries unless they are formally designated in old-growth management areas in an approved landscape unit. In this case, the licensee had identified wildlife tree patches in the forest development plan. However this does not provide for long term protection or management of these identified wildlife tree patches under the Code. The licensee was free to remove those patches in subsequent forest development plan updates. Even when wildlife tree patches fall within silviculture prescription boundaries, they are only tracked and managed for the life of the prescription. Once a stand reaches free-growing status, the silviculture prescription expires. When the prescription expires, the requirements for and the record of the wildlife tree patches may disappear.

The Ministry of Forests and the Ministry of Environment, Lands and Parks set out provincial policy for wildlife tree retention in their February 2000 *Provincial Wildlife Tree Policy and Management Recommendations*. The document recommends that wildlife tree patches be included within the total area under a silviculture prescription to allow for auditing and tracking. Although this improves the ability to track wildlife tree patches, it does not provide for their long-term protection. Even so, this is only a policy and not an enforceable requirement of the Code.

The Code does provide for tracking of wildlife tree patches in two instances. Wildlife tree patches are tracked if they fall within old-growth management areas in an approved landscape unit plan. Wildlife tree patches can also be tracked when wildlife tree retention rates are established as objectives in a landscape unit plan. However, until landscape unit planning actually addresses old-growth and biodiversity, the designation, protection and management of wildlife tree patches is at risk. Therefore the Board advises that, at any given time, the district manager must be able to identify the location of forest cover that is being retained as wildlife trees or wildlife tree patches. This will ensure that the recommended retention rates in the *Biodiversity Guidebook* are achieved before and after landscape units are formally established.

This investigation also revealed that circumstances may encourage district managers to approve road construction prior to foreshore lease approvals. This occurs when lease approvals are considerably delayed. On the other hand, there is a duplication of review, comment and agency referral processes under both the forest development plan and foreshore lease approval processes. The Board suggests that both processes be reviewed to improve efficiencies (e.g., combine the processes, share components of the processes, provide consistent review timeframes between agencies.)

Conclusions

1. Were approvals of the forest development plan and silviculture prescription reasonable, if harvesting the blocks would be contrary to the old-growth retention and biodiversity targets in the draft Sechelt Peninsula landscape unit?

   The district manager's decision to approve the 1999-2003 Forest Development Plan was reasonable. The Sechelt Peninsula landscape unit had not been established as a higher level plan under the Act. There was no legal requirement for the forest development plan to be consistent with the draft landscape unit plan. The licensee should consider the draft landscape unit plan, but is not obligated to meet the plan's objectives. The district manager, however, must consider if the forest development plan manages and conserves forest resources. This consideration should take into account the draft landscape unit plan as the best available information. In this specific case, measures to address old-growth values were best addressed in the silviculture prescription, not the forest development plan. Current planning initiatives by the licensee may address old-growth management issues raised by the "I" block proposal in the licensee's 1999-2003 Forest Development Plan.

   The district manager's decision to approve the silviculture prescription was reasonable because it was consistent with the requirement to maintain veteran trees as per the *Biodiversity Guidebook*. The silviculture prescription was also consistent with the wildlife tree retention rates provided by the district manager.

2. Was the forest development plan approval reasonable considering the assertion that the logging will affect a recreational hiking trail?

   The trail's location was tentative and was not formally proposed until after the forest development plan was approved. The proposed hiking trail is not a higher level plan, so the

requirements of section 10 of the Act are not applicable. The district manager's approval of the development plan is reasonable, as it does not preclude the creation of a hiking trail.

3. Should road construction begin before the approval of a silviculture prescription or foreshore lease?

   The Code does not prohibit approval of a road permit prior to the approval of silviculture prescriptions or foreshore leases. The Code ensures that a road permit is consistent with the forest development plan. Once the development plan is approved, road construction, silviculture prescription and cutting permit approval can proceed. It is common practice for the road to be built before approval of a silviculture prescription. Site-specific information in the silviculture prescription would not affect the road location.

   District managers may, on occasion, find it necessary to approve road construction prior to foreshore lease approvals. Such a situation could occur when lease approvals are delayed. Approval of road permits before foreshore leases are issued should, however, be the exception rather than the rule.

Location of Skaiakos Point Complaint